application nor have I enquired into the matter. However, the affidavit of Mr. Tan Guong Ching for the Minister was filed on 18 April 1988. On these facts, it was therefore not right for Mr. Blom-Cooper to say that there was considerable delay. He gave a double digit figure of months of delay. He was wrong. There was no delay whatsoever in the filing of the affidavit for the Minister as the application for leave was only regularized close to the end of January 1988. There is no foundation, therefore, for the argument about after-thought and bad faith.

Finally, I want to say a few words on the submission for the applicants made on paragraph 6 of the affidavit of Mr. Tan Guong Ching. In what was said in this paragraph, it was urged upon me that the Minister had, in making his decision, taken into account the misdeeds of the AWSJ prior to the enactment of the 1986 Act, and this was fatal to his decision. I disagree. First, of the ten articles referred to in paragraph 6, five were published after Parliament had passed the 1986 Act. Secondly, there is nothing in paragraph 6 to say that the Minister had in fact directed his mind to any of those articles in making his decision. It is clear when one looks at the affidavit carefully, that paragraph 6 merely gives the background facts, of what the AWSJ continued to report from time to time. No reference is made in this paragraph, as are stated from paragraph 15 onwards, on the decision-making process of the Minister. Thirdly, even if he had considered the articles in paragraph 6 in making his decision on 9 February 1987, he was not giving retrospective effect to the 1986 Act. I cannot understand how the rule against retrospective operation of a statute which protects existing or vested rights can apply to protect something that is in the mind of a person. Then again, what vested rights did the AWSJ have before the 1986 Act. It had a vested right to print and distribute copies of the AWSJ in Singapore. Again, I do not understand how it can be said that before the 1986 Act, the AWSJ had acquired vested rights to commit misdeeds in its reports and articles in the AWSJ.

It remains for me to summarize what I have said in this judgment. First, the decision whether a foreign newspaper is or is not engaging in the domestic politics of Singapore is for the Minister to make and not for the courts. Secondly, there were ample facts to attract the statutory powers given to the Minister under section 16 of the Act. Thirdly, the Minister had taken into account only relevant facts, and had not considered any irrelevant matters. Fourthly, in the decision-making process, the Minister had, at all times, acted fairly and had afforded the AWSJ every opportunity to rectify the grave errors in the scathing attack in the article on SESDAQ. Fifthly, there is no evidence that the Minister had in any way acted unreasonably. Lastly, though I have not dealt with it in this judgment, the principle of proportionality has not even yet been accepted in England as a principle of administrative law.

The application for orders of certiorari is dismissed with costs.

Application dismissed.

Solicitors: *Murphy & Dunbar.*

PETER THAM WING FAI v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) 10 May 1988]

[Singapore – Magistrate's Appeal No. 345 of 1986]

Criminal Law – Forgery – Documents purported to be valuable securities – Whether share certificate a valuable security – Sentence – Penal Code (Cap. 103, 1970 Ed.), ss. 30, 71(1) & 467.

Criminal Procedure – Sentencing – Distinct offences – 36 charges of forging share certificates and transfer forms – Whether each charge a "distinct offence" – "Every distinct offence" – Meaning of – Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 167.

The appellant pleaded guilty to 36 charges of forging documents which purported to be valuable securities, being offences punishable under section 467 of the Penal Code (Cap. 103, 1970 Ed.). He was sentenced to four years' imprisonment on each of the 36 charges, to run concurrently except sentences on two of the charges to be served consecutively. Effectively, the appellant has to serve a total of eight years' imprisonment.

The appellant appealed against the decision of the trial judge in respect of this two rulings, *i.e.* that a share certificate is a valuable security and that section 71(1) of the Penal Code does not apply. The appellant contended that the offences were all part of a single transaction and were not distinct offences for the purposes of sentencing. The appellants also appealed against the sentences imposed.

Held, dismissing the appeal: (1) section 30 of the Penal Code defines "valuable security" as any document by which a legal right is, *inter alia*, created, or whereby a person acknowledges that he lies under a legal liability. A share certificate is more than just evidence of title to shares. The purpose of share certificates is to give to the holders of shares additional facilities for dealing with and transferring

their shares. The holder of a certificate has a right to register his interest. In order for a person to be registered as holder of shares, the production of a share certificate is necessary. The share certificate gives the holder or possessor of the certificate the right to demand to be registered as a shareholder. A share certificate is therefore a valuable security within the meaning of section 30 of the Penal Code;

(2) "distinct" means not identical. Offences which were not inter-related would be distinct, but inter-related offences could also be distinct; it would depend upon the circumstances whether there was only one transaction and one offence committed. A series of offences of the same or a similar character could also be distinct, as could offences committed in the same transaction;

(3) section 71 of the Penal Code applies to "composite offences", *i.e.* offences where the constituent acts are themselves offences. This section would have applied if the appellant had been additionally charged with forging the company seal and forging the director's signature. The forging of each share certificate and each transfer form stood separately by itself as a distinct offence. They were not parts of one offence. Each forgery was an offence in its own right. The Senior District Judge was therefore right in holding that there were 36 distinct offences.

Cases referred to:

(1) *Daniel* v. *The State* A.I.R. (1968) Mad. 349 (folld).
(2) *Hari Das Mundhra* v. *The State* [1962] Ind. L.R. All. 451 (folld).
(3) *In Re Bahia and San Francisco Railway Co.* [1868] L.R. 3 Q.B. 584 (folld).
(4) *Societe Generale De Paris* v. *Janet Walker & Ors.* (1886) 11 App. Cas. 20 (folld).
(5) *In re Ottos Kopje Diamond Mines Ltd.* [1893] 1 Ch. 618.
(6) *Rumball* v. *The Metropolitan Bank* (1877) 2 Q.B.D. (cited).
(7) *Hart* v. *Frontino and Bolivia South American Gold Mining Co. Ltd.* (1870) L.R. 5 Ex. 111 (refd).
(8) *Dixon* v. *Kennaway & Co.* [1900] 1 Ch. 833 (refd).
(9) *The Balkis Consolidated Company Ltd.* v. *Frederick Tomkinson* [1893] A.C. 396 (refd).
(10) *Chunnoo* v. *State* (1954) Cr.L.J. 1762 (Allahabad) (refd).
(11) *Banwarilal* v. *Union of India* A.I.R. 1963 S.C. 1620 (refd).
(12) *Sheikh Hassan bin Sheikh Ibrahim* v. *Public Prosecutor* [1940] M.L.J. Rep. 54 (refd).

MAGISTRATE'S APPEAL.

Denis Tan (*Lai Swee Fung* with him) for the appellant.

John Koh (*Miss Eleanor Wong* with him) for the respondent.

Cur. Adv. Vult.

Chua J.: The appellant pleaded guilty to 36 charges of forging documents which purported to be valuable securities, being offences punishable under section 467 of the Penal Code (Cap. 103, 1970 Ed.) He was sentenced to four years' imprisonment on each of the 36 charges, to run concurrently except sentences in two of the charges to be served consecutively. Effectively, the appellant has to serve a total of eight years' imprisonment.

The 36 charges preferred by the prosecution can be divided into two sets of 18 charges each. The charges in each set of charges are identical except where they refer to individual share certificates, transfer forms and the respective dates on which the offences were committed. They took the following forms:

"(a) *First Set:*

'You, Peter Tham Wing Fai, NRIC No. 0295616/B, are charged that you on or about the 11th day of September 1979 at the office of Associated Asian Securities ('AAS') on the 22nd Floor, CPF Building, Robinson Road, Singapore together with one Krishna Kumar s/o Balasundram in furtherance of the common intention of you both forged a document which purported to be a valuable security namely an Ambassador Hotel Ltd ('AHL') share certificate numbered 10902 for 100,000 AHL shares of $1.00 each fully paid and thereby committed an offence punishable under section 467 read with section 34 of the Penal Code, Chapter 103.'

(b) *Second Set:*

'You, Peter Tham Wing Fai, NRIC No. 0295616/B, are charged that you on or about the 11th day of September 1979 at the office of Associated Asian Securities ('AAS') on the 22nd Floor, CPF Building, Robinson Road, Singapore together with one Krishna Kumar s/o Balasundram in furtherance of the common intention of you both forged a document which purported to be a valuable security namely a duly attested transfer form for an Ambassador Hotel Ltd ('AHL') share certificate numbered 10902 for 100,000 AHL fully paid shares of $1.00 each and thereby committed an offence punishable under section 467 read with section 34 of the Penal Code, Chapter 103.' "

The appellant entered an equivocal plea of "guilty" to forging the share certificates in respect of the first set of charges, but disputed that the share certificates were "valuable securities" within the meaning of section 30 and section 467 of the Penal Code.

The trial judge, therefore, treated the appellant's plea as one of "not guilty" and, after hearing submissions for both the prosecution and the defence, he held that a share certificate is a "valuable security" within the meaning of section 30 of the Penal Code. The appellant then entered an unequivocal plea of "guilty" to each of the charges and was convicted.

In respect of the second set of charges, the appellant pleaded guilty thereto at the outset and was duly convicted.

Upon the appellant's conviction on all the 36 charges, the appellant's counsel submitted that section 71(1) of the Penal Code applied to the appellant's case in that by virtue of that section the appellant could only be given one sentence. However, the trial judge ruled that that section did not apply.

Short facts of the case

The appellant was, in 1979, the majority shareholder and managing director of Associated Asian Securities ("AAS"), a stockbroking firm, in which he held 64% of its shares. He was also a director of AAS Nominees as well as a major shareholder of Ambassador Hotel Ltd ("AHL"), a public listed company incorporated in Singapore, holding 1.1 million shares and he also had virtual control over an additional 830,000 shares held by his brother, Tham Chong Fai, in the same company. He was effectively in control of AAS, AAS Nominees and AHL. Krishna Kumar s/o Balasundram ("Kumar") was then the general manager of AAS and the secretary of AAS Nominees.

In 1978 and 1979 the appellant, in the course of his firm's business, committed AAS to substantial purchase contracts, amounting to over $11 million, for shares listed in Singapore, Kuala Lumpur and London Stock Exchanges on behalf of one Eng Chin Ah ("Eng"), a Malaysian, as well as for the Goodyield group of companies of which Eng was also a director. In respect of these contracts and upon the delivery of the shares purchased thereunder, AAS encountered difficulties in meeting its payment obligations. In addition to this, AAS was confronted with demands from its bankers, the United Overseas Bank, for the repayment of a sum of over $1.1 million that had been overdrawn by AAS on its account with them. Faced with these financial problems which beset AAS, the appellant made several trips to Kuala Lumpur to request for funds from Eng in order to alleviate the financial position of AAS.

The result of these meetings was that Eng proposed that the appellant should hand to him AHL shares with which Eng could then pledge with banks in Malaysia, thereby increasing his (Eng's) credit facilities with those banks, and through which the needed funds could be raised and remitted to AAS.

The appellant had by then already pledged all his substantial AHL shares and all his brother's (Tham Chong Fai's) AHL shares with the United Overseas Bank, the bankers of AAS, for overdraft facilities.

As a result of the meetings the appellant had with Eng, what then happened was that the appellant approached Kumar with a proposal to forge AHL share certificates, with accompanying "blank transfers". This exercise commenced on 11 September 1979 in the appellant's office to which Kumar had been summoned. There the appellant produced 20 blank (unused) AHL share certificates, each for 100,000 fully paid AHL shares, which were numbered 10901 to 10920. The name of AAS Nominees were typed therein as the registered shareholder of the shares in question. The AHL seal was also affixed on each of the certificates. The appellant signed these certificates using the name of his brother, Tham Chong Fai, as a director of the company, while Kumar also affixed thereon a signature purporting to be that of the actual secretary of AHL, one Eu Eng Kong, as secretary. The appellant also directed Kumar to obtain unused share transfer forms to accompany each of the forged share certificates, to be similarly forged. The transferor in each of these forms was made out to be AAS Nominees. Kumar also affixed the seal of AAS Nominees on each of these forms. The appellant then signed each of these forms with a signature purporting to be that of Lam Lian Seet, a director of AAS Nominees, who had resigned. The appellant explained to Kumar that he did so in order not to show any connections between himself and the forged forms. Kumar himself affixed his own signature to these forms as the secretary of AAS Nominees, an appointment that he actually held. The rest of the forms were left blank as is the custom.

Sometime late in September, after the forgeries were completed, eleven of the forged AHL share certificates, Nos. 10901 to 10911, with corresponding forged "blank transfers", were delivered by the appellant to Eng in Kuala Lumpur. Eng then pledged them with Bank Bumiputra Berhad in Kuala Lumpur as collateral for credit facilities. Subsequently, on 17 September 1979, a Bank Bumiputra cashier's order for M$1.75 million and a cheque for M$50,000 from Goodyield Holdings were given by Eng to the appellant. These cheques were banked into an AAS account in Malaysia, from where a sum of M$1.1 million was drawn and paid to the United Overseas Bank in Singapore, thereby acceding to the bank's earlier

demands for the reduction of the overdrawn account of AAS.

Following this, the appellant informed Kumar that Eng could obtain more funds if Eng had more AHL shares. Accordingly, sometime in mid-October 1979, more AHL share certificates, Nos. 10921 to 10940, together with corresponding share transfer forms were forged by the appellant and Kumar, which was carried out in a similar way as was done on the earlier occasion in respect of AHL share certificates Nos. 10901 to 10920 and their corresponding share forms.

In mid-December 1979, Eng paid several visits to the appellant at the latter's office. The appellant subsequently informed Kumar that Eng was finalizing credit facilities at the Moscow Narodny Bank, Singapore. In late December, seven forged AHL share certificates, Nos. 10927 to 10933, with their corresponding forged "blank transfers", were given by the appellant to Eng. These were deposited as collateral at Moscow Narodny Bank to secure credit facilities for Shin-Nikko, a company belonging to Eng. Forged letters confirming that the shares belonged to AAS Nominees dated 3 January 1980 were also submitted by the appellant to the bank. One Phoon Ah Lek, a director in Shin-Nikko and a close associate of Eng, also requested the bank not to register the share certificates so deposited. This was done at the specific request of the appellant. On 4 January 1980, Eng gave to the appellant a cheque for $1.7 million drawn on the account of Shin-Nikko with the said bank. This sum was deposited with an AAS bank account.

In March 1981, the Moscow Narodny Bank threatened to enforce its security against Shin-Nikko by using the forged AHL share certificates and "blank transfers" in its possession. The appellant came to know of the bank's threats and on 1 April 1981, he instructed Kumar to issue a cheque to Shin-Nikko for $1,773,712 from an AAS account in Malayan Banking Berhad. This cheque was deposited at Shin-Nikko's account in the Moscow Narodny Bank and the seven forged certificates and "blank transfers' were then returned to the appellant, who shredded them.

Of the initial eleven forged AHL share certificates, Nos. 10901 to 10911, together with their "blank transfers", two were recovered by officers from the Commercial Affairs Department ("CAD") from two financial institutions, namely, the Bank of Tokyo, Singapore branch, and Nanyang Finance. Certificate No. 10908 was recovered from the Bank of Tokyo where it was pledged by AAS in October 1985 as collateral for credit facilities for AAS. The second certificate, No. 10911, was recovered from Nanyang Finance where Eng had pledged it as collateral for a loan of $400,000. A third certificate, No. 10902, was seized by CAD investigators from Eng. The rest of the forged certificates and their "blank transfers" were returned to the appellant, either by Eng or Phoon Ah Lek, at various times between 17 September 1979 and June 1985, who shredded them.

It was also discovered that before the certificates and the "blank transfers" were returned to the appellant or seized by CAD investigators, they had been variously pledged at several different financial institutions by Eng, Phoon Ah Lek, Sng Hock Seng and AAS.

The appellant is now appealing against the decision of the trial judge in respect of his two rulings, *i.e.* that a share certificate is a valuable security and that section 71(1) of the Penal Code (Cap. 103, 1970 Ed.) does not apply. The appellant is also appealing against the sentences imposed.

Is a share certificate a "valuable security"?

Section 30 of the Penal Code (Cap. 103) defines "valuable security" as follows:

> "The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

The trial judge, in his ruling that a share certificate is a valuable security, said (at p. 187 of the record):

> "Whilst it is not incorrect to say that share certificates are indeed documents which are *prima facie* evidence of the title to its holder to shares in a company (*vide* section 123(1), Companies Act (Cap. 185)), it would be too narrow an interpretation to conclude that that is all it signifies. With such a document in his name the holder also becomes, *inter alia*, entitled to a legal right to be registered as a shareholder of the company, which is in addition to other concomitant rights, such as, for example, entitlement to the shares specified in the certificate. For the purposes of the present case, however, it suffices to say that when one becomes the holder of a share certificate there is created for the benefit of that holder a legal right to be registered with the company as a shareholder. This is personal to the holder and where the shares in that certificate are properly transferred to another there is created afresh for the benefit of that transferee the right to be registered. Section

30 of the Penal Code (Cap. 103) refers to 'any legal right' which, in my view, includes such a right. Accordingly, it was ruled in the course of this trial that a share certificate is a 'valuable security' within the meaning of sections 30 and 467 of the Penal Code (Cap. 103)."

Counsel for the appellant says that the trial judge misunderstood the concepts of share certificates and registration of shareholders; and submits that his ruling that when one becomes the holder of a share certificate there is created for the benefit of that holder a legal right to be registered with the company as a shareholder and therefore this legal right refers to the legal right referred to in section 30 and therefore a share certificate is a valuable security is clearly wrong.

It is argued that it is the registration of a shareholder in a company's register of the number of shares in his name that entitles him the right he is entitled to to be issued with a share certificate or share certificates together with his other rights, for example, voting at company's meetings, bonus issues, dividends and also the right to transfer his shares. The holder of a share certificate does not by itself allow him to be registered unless the share certificate is accompanied by a transfer form or other memorandum to indicate that he is the new owner of the shares.

The key words in section 30 are "*any legal right*" and the words "*whereby any person acknowledges that he lies under legal liability*".

The concept of legal right was considered in the Indian case of *Daniel* v. *The State.*[1] In that case, an American national obtained a British passport under the false name of a deceased British subject by forging his signature on the application for a British passport. He used the passport issued to obtain entry into India. He was charged, *inter alia,* for forging a document which purported to be a valuable security, namely, the passport. The court held that the passport creates a legal right as mentioned in section 30 of the Indian Penal Code and is a valuable security. Section 30 of the Indian Penal Code defines "valuable security" and is *in pari materia* with our section 30 of the Penal Code. Reddy J. said (p. 354 para (21)):

"Legal right is a difficult concept. It is not defined. It is, therefore, necessary to note carefully what the eminent jurists have said about this concept of legal right."

He then went on to consider what the eminent jurists said and he said (p. 355):

"From the statements made by the jurists noted above, the following principles can be deduced broadly to understand what a 'legal right' is: (1) legal right in its strict sense is one which is an assertable claim, enforceable before courts and administrative agencies; (2) in its wider sense, a legal right has to be understood as any advantage or benefit conferred upon a person by a rule of law; (3) there are legal rights which are not enforceable, though recognized by the law; (4) there are rights recognized by the International Court, granted by international law, but not enforceable; and (5) a legal right is a capacity of asserting a secured interest rather than a claim that could be asserted in the courts.

It is, therefore, clear that the test of enforceability, though it may be a normal one, is not the only test for determining a legal right. A legal right may be one recognized by rule of law, either by municipal law or international law, without the capacity of being enforced. A legal right may be asserted even before administrative agencies. It includes the liberty of freedom from penalty. In short, it can be said that a legal right is one which is either enforceable or recognized."

Section 123(1) of the Companies Act (Cap. 50, 1985 Ed.) provides that a share certificate is *prima facie* evidence of title to shares. It is argued by counsel for the appellant that it is in fact nothing more than a material piece of evidence to show that a person is a shareholder of a company; that it is a document which evidences title but does not of itself convey or purport to convey any legal right or to do any of the things envisaged in section 30 and that no legal right exists *per se* from a share certificate.

In the Indian case of *Hari Das Mundhra* v. *The State,*[2] a big industrial magnate was convicted under section 471 read with section 467 of the Indian Penal Code of fraudulently and dishonestly using as genuine share certificates and transfer deeds which he knew or had reason to believe to be forged documents, by depositing them with a business firm in order to secure the sale of cloth worth seven hundred thousand rupees. The court held that the share certificates were valuable securities within the meaning of section 30 and section 467 of the Indian Penal Code. Section 471 and section 467 of the Indian Penal Code are *in pari materia* with sections 471 and 467 of our Penal Code.

The important public function of share certificates was explained by Cockburn C.J. and Blackburn J. in *In Re Bahia And San Francisco Railway Co.*[3] Cockburn J. said (p. 594):

"The company is bound to keep a register of shareholders, and has power to issue certificates certifying that each individual shareholder named therein is a registered shareholder of the particular shares specified. This power of granting certificates is to give the shareholders the opportunity of more easily dealing with their shares in the market, and to afford facilities to them of selling their shares by at once showing a marketable title, and the effect of

this facility is to make the shares of greater value. The power of giving certificates is, therefore, for the benefit of the company in general; and it is a declaration by the company to all the world that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the company, and it is given by the company with the intention that it shall be so used by the person to whom it is given, and acted upon in the sale and transfer of shares."

Blackburn J. said (p. 595):

"When joint stock companies were established, the great object was that the shares should be capable of being easily transferred; and the legislature has made provision by 25 & 26 Vic. c. 89, section 25 (Companies Act 1862) that the company shall keep a register of the members ..."

He continued (p. 596):

"The statute further provides that the company may give certificates specifying the shares held by any member; and the object of this provision is expressly stated to be that this certificate should be *prima facie* evidence of the title of the person named to the shares specified; and the company, therefore, by granting the certificate, do make a statement that they have transferred the shares specified to the person to whom it is given, and that he is the holder of the shares. If they have been deceived and the statement is not perfectly true, they may not be guilty of negligence, but the company and no one else has power to inquire into the matter; and it was the intention of the legislature that these certificates should be documents on which buyers might safely act."

So the purpose of share certificates is to give to the holders of shares additional facilities of dealing with and transferring their shares and to make them more negotiable in the market and thus to add to their value. This is done for the benefit not only of the company but also of the public in general.

The facts of that case were these: T, being the registered holder of five shares in a registered joint stock company, left the share certificates in the hands of her broker for safe-keeping. A forged transfer, purporting to be made by T to S and G, together with the certificates, was left with the secretary of the company for registration. The secretary in the ordinary course of business wrote to T, notifying that the transfer had been so left, and receiving no answer after ten days, registered the transfer and removed the name of T from the register of shareholders and substituted the names of S and G on the register as holders of the five shares and delivered to them certificates certifying that they were the registered holders of the five specific shares. These shares were afterwards sold, through brokers, and transferred to B and C, who bought them *bona fide* without notice of the forgery or of any fraud. The names of B and C were registered in the register of shareholders as holders of the shares and share certificates were given to them. Upon discovery of the forgery, the company was called upon by T to restore her name to the register as the holder of the shares and the company was advised to restore T's name to the register by rule of court under the Companies Act 1862. It was held that the giving of the certificates by the company to S and G amounted to a statement by the company, intended by the company to be acted upon by purchasers of shares in the market, that S and G were entitled to the shares and that B and C having acted upon that statement, the company was estopped from denying its truth. That B and C were therefore entitled to recover from the company damages for the loss of the shares.

The holder of a share certificate has a right to register his interest and is a condition precedent to the passing of title, as a share certificate cannot be registered without its production to the registrar of the company.

In *Societe Generale De Paris* v. *Janet Walker & Ors.*[4] it was decided that a complete legal title to shares could not be acquired without registration and that in most cases registration can only take place upon production of the share certificate, and that a "blank transfer" in itself is inadequate. The requirement that a share certificate be produced is more than a mere formality.

The Earl of Selborne had this to say about share certificates and share transfers. He said (p. 29):

"But, in this case, I am of opinion that the appellants had not, on 4 January 1883, any such right (an absolute and unconditional right to be registered as shareholders) even if the transfer, after the blanks were filled up, had been delivered as his deed by James Montgomery Walker. That transfer was not accompanied by *the certificates which, in companies of this kind, are the proper (and, indeed, the only) documentary evidence of title in the possession of a shareholder,* and which, according to the usual course of dealing with such shares, ought to come into the hands of a *bona fide* transferee for value. The respondents, when they took their prior security, did obtain possession of those certificates; and on the face of each such certificate there was an engagement under the company's common seal that no transfer of any portion of the shares thereby represented should be registered without delivery of the certificate at the company's office." (The emphasis is mine.)

The share certificates of AHL stated that no transfer of the shares or any portion represented by the certificate could be registered without the production of the certificate to the registrar of

the company. Every share transfer is therefore incomplete without the share certificate.

As the Earl of Selborne in *Societe Generale De Paris*[4] said (p. 30):

"The respondents not only had the certificates, but they had the company's undertaking under seal that there should be no change of the registered title unless those certificates were produced."

It is an acknowledgement by the company that it would be liable for damages if the transfer took place without the share certificates.

Share certificates were introduced to prevent problems arising as to identity of shareholders. Lord Blackburn in *Societe Generale De Paris* said (p. 35):

"But very soon (I cannot tell how soon) those who took as security from the holder of shares as engagement by which he bound himself not to part with the shares to any one else until that security was discharged, perceived that the security would practically be much better if they had the certificates in their possession. The registered holder of the shares still might, if dishonest enough, in violation of his contract, execute a transfer, but he would have much more difficulty in finding a transferee who *bona fide* would be led to believe that he was entitled to do so."

Lord Blackburn commented on the case of *In Re Bahia and San Francisco Railway Company*[3] in these words (p. 36):

"In *In Re Bahia and San Francisco Railway Company* the facts were very similar but the point decided was not quite the same. The certificate is set forth in the special case, and probably had not on it such a note, at all events it is not there set out. But the point decided was that the company were liable to make good their loss to persons who had purchased and paid for the shares from those who produced genuine transfers from those who had been registered along with genuine certificates granted to them, although that register was set aside. All the judges put it on the ground that in the usual course of business the production of the certificates along with the transfer entitled the transferee to pay on the faith of the certificate, which therefore amounted to a preclusion against the company."

Lord Blackburn then goes on to suggest that the share certificates would serve to give notice of title. He said (p. 37):

"... it does make it important for those who purchase shares to see that the transfer is not only by a deed duly executed, but is accompanied by the certificate. Unless that is so, the transfer, to use the phrase of the witnesses in this case, is 'not in order'. And without going further, it at least makes it not wrong for the company to pause and make some inquiry before exercising their powers."

Lord FitzGerald in the same case said (p. 44):

"Now, the statute and the articles of association must be taken together. *The former shews that the certificates are to be prima facie evidence of the title to the shares; and the latter that the certificates are the only instruments and evidence of title which the member is entitled to have delivered to him. The certificate is his title deed.* The 12th article provides that the share capital is issued 'on such terms and conditions and in such manner as the board may think fit;' and one of those conditions is expressed to be that 'no transfer of any portion of the shares represented by the certificate will be registered until the certificate has been delivered at the company's office'.

It seems to me that the parties are not in all respects in an equal position – that *the defendants have the earlier pledge rendered effectual by the possession of the certificates, and that their prior and superior title has not been displaced by the evidence given by the plaintiffs.*"

(The emphasis is mine.)

The importance of the share certificate is clear. Without it, legal title does not pass. It gives the holder or possessor of the certificate the right to demand to be registered as a shareholder.

The authorities clearly established that a company is estopped from denying the share certificate holder's title to the shares specified in the certificate and from disputing the holder's right to be registered. In *In Re Ottos Kopje Diamond Mines Ltd.*[5] Lindley C.J. said (p. 625):

"A purchaser of shares can come to the company and produce the certificate and transfer, and say, 'Register me as the holder of these shares,' and if the transfer is in order and the company is estopped from denying the validity of the shares, they fail in their duty towards him if they do not register him, and an action for that breach of duty will lie."

A share certificate is therefore a representation upon which both the named holder and subsequent transferees for value can rely. The company is estopped, by virtue of the certificate, from denying that the person named therein is a shareholder.

The registered holder of a share certificate is entitled to exercise certain rights as against the company (see *In Re Bahia*[3]). This right is founded on the representation in the certificate issued by the company that the person named therein is a shareholder.

Such a representation can operate to make an instrument transferable or even negotiable. In *Rumball* v. *The Metropolitan Bank*[6] Mellor J. said (p. 197):

"The scrip itself would be a representation to any one taking it – a representation which the appellant must be taken to have made or to have been a party to – that if the scrip were taken in good faith and for value, the person

taking it would stand to all intents and purposes in the place of the previous holder. Let it be assumed, for the moment, that the instrument was not negotiable, that no right of action was transferred by the delivery, and that no legal claim could be made by the taker in his own name against the foreign government; still the appellant is in the position of a person who has made a representation on the face of his scrip, that it would pass with a good title to any one on his taking it in good faith and for value, and who has put it in the power of his agent to hand over the scrip with this representation to those who are induced to alter their position on the faith of the representation so made."

In *Hart* v. *Frontino and Bolivia South American Gold Mining Co. Ltd.*[7] the court there held that the plaintiff, having relied on the company's representation to his detriment, was entitled to damages from the company for the value of the shares. (See also *Dixon* v. *Kennaway & Co.*[8])

In *The Balkis Consolidated Company Ltd.* v. *Frederick Tomkinson*[9] P, the owner of numbered shares in a joint stock company, transferred them to persons who were registered in the company's books as proprietors of the shares. P afterwards fraudulently executed a transfer of the shares for value to T, who sent the transfer to the company, and received from them a certificate under their common seal stating that he was the proprietor of the shares. T, acting *bona fide* on the faith of the certificate, sold the shares; but the company refused to register the purchaser as the proprietor, on the ground that after granting the certificate to T they had discovered that he was not the real owner of the shares. T then, to fulfil his contract with the purchaser, bought other shares in the market and sued the company for the price. The House of Lords held that the company were estopped by their certificate from denying that T was the proprietor of the shares, and that he was entitled to recover from the company the damages which he had in fact sustained owing to their refusal to register the purchaser.

It is clear from the authorities that rights are created by the issue of a share certificate. Similarly, the company in issuing the share certificate acknowledges certain legal liabilities.

The trial judge was correct in deciding that a share certificate is a valuable security within the meaning of section 30 of the Penal Code.

Application of section 71(1) of the Penal Code (Cap. 103, 1970 Ed.)

Counsel for the appellant submits that the trial judge erred in law in holding that section 71(1) of the Penal Code was inapplicable in the present case and that each of the charges would be treated as a distinct and separate offence for the purpose of sentencing.

Section 71(1) reads:

"71.(1) Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided."

The submission of counsel is this. Section 167 of the Criminal Procedure Code (Cap. 113, 1970 Ed.) provides that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately. In the present case all the 36 charges are in fact one distinct offence and that section 17 of the Criminal Procedure Code does not arise and consequently the provisions of section 71(1) of the Penal Code would apply, necessitating the imposition of only one sentence.

To support this argument that there is only one distinct offence, counsel says that the facts show that the offences are so closely inter-related by community of purpose in that all the forgeries were done for the single purpose of alleviating the financial crisis that beset AAS for which Eng was responsible and Eng either could not or would not pay the large sum of around $12 million owed by him to AAS; that the appellant was propositioned by Eng "to lend" him AHL shares to enable him (Eng) to borrow funds from banks and other financial institutions; that the appellant embarked on the forgeries with that original intent in mind; that there was one agreement between Kumar and the appellant, namely, to provide Eng with a number of forged share certificates. Counsel submits that, in these circumstances, there is only one offence for the purpose of section 71(1).

Section 17 of the Criminal Procedure Code provides that the court may sentence a person to several punishments when he is convicted at one trial of any two or more distinct offences. Counsel referred to two Indian cases where the word "distinct" in section 133 of the Indian Penal Code (which is *in pari materia* with our section 167 of the Criminal Procedure Code) received judicial consideration. The cases are *Chunnoo* v. *State*;[10] *Banwarilal* v. *Union of India*.[11] The judges in those cases stated in effect that for an offence to be "distinct" "there should be no connection

between the various acts which give rise to criminal liability" (per Kidwai J. in *Chunnoo's* case at p. 1764 para (10)) nor "in any way inter-related" (per Raghubar Dayal J. in *Banwarilal's* case at p. 1624 para (14)).

Counsel also cited the Malaysian case of *Sheikh Hassan bin Sheikh Ibrahim* v. *Public Prosecutor*.[12] In that case the appellant was charged first with criminal breach of trust in respect of $23 paid to him on 23 separate occasions within a space of one year. The second charge alleged that with intent to defraud he committed falsifications of accounts by wilfully omitting to enter the 23 payments in his cash book. The Court of Appeal held that the criminal breach of trust charged was one offence, though made up of the 23 items, and that when the falsifications charged were confined to those items, the criminal breach of trust and the falsifications were so closely inter-related that the 23 falsifications became a single offence like the 23 breaches of trust which formed a single offence and that the falsifications were related to the criminal breach of trust items by community of purpose and they stood to one another in the relationship of cause and effect.

Counsel submitted that the charges against the appellant come nowhere near any of the definitions of distinct offences but is on point with *Banwarilal* and *Sheikh Hassan* as the offences alleged are so closely inter-related by community of purpose in that all the forgeries were done for the single purpose of alleviating the financial crisis which AAS was facing, that there was one agreement between Kumar and the appellant to provide Eng with a number of forged share certificates. In those circumstances, it is submitted that there is only one offence.

Counsel also submits that there is a difference between "separable offences" which come within the provisions of section 71 of the Penal Code and "distinct offences" under sections 17, 167-169 of the Criminal Procedure Code and as the 36 offences are "separable offences", section 71(1) of the Penal Code should apply to the facts of this case.

The trial judge in his ruling said (p. 199 of the record):

"It is my view that the mere fact that several offences are committed in the same transaction and a person is charged for such offences in one trial does not bring into play section 71(1) of the Penal Code (Cap. 103). This provision will only come into play where, as in *Nilmony Poddar* v. *Queen-Empress (supra)*, the offender is not only charged for the principal offence but also with the component parts of it which are offences in themselves. As such, it was ruled during these proceedings that section 71(1) of the Penal Code (Cap. 103) was inapplicable in the present case and that each of the charges would be treated as a distinct and separate offence for the purpose of sentencing."

Section 167 of the Criminal Procedure Code is a general provision which provides that there should be separate charges for distinct offences and that such charges should be tried separately and in certain circumstances jointly. It must be read with sections 168, 169, 171 and 175 of the Criminal Procedure Code which specifically provide for situations where charges may be tried jointly in one trial.

It will be seen from sections 168 and 169 that offences, which though distinct in the sense that each is a completed offence, are nevertheless connected through their similarity to each other (section 168) or by a continuity of purpose and design common to each offence or related to one another as cause and effect (section 169 and see *Chunnoo*[10] and *Sheikh Hassan bin Sheikh Ibrahim*[12]). It would appear from sections 168 and 169 that "distinct offences" may also be a "series of offences of the same or a similar character" or offences committed in the "same transaction".

The question arises as to what is meant by "every distinct offence" in section 167 of the Criminal Procedure Code. "Distinct" means "not identical". Two offences would be distinct if they are not in any way inter-related but if there is some inter-relation it would depend on the circumstances of the case in which the offences were committed whether there is only one transaction and only one offence was committed.

As regards the forgeries in this present case, the trial judge said (p. 195 of the record):

"In the present case the forgeries that were committed on each of the two occasions, namely, on 11 September 1979 and 15 October 1979, were committed at one sitting, so to speak. The accused and Kumar attended to their tasks for the purpose of handing over the forged documents to Eng, who had made it known to the accused that he would be pledging them with financial institutions in Malaysia to obtain more credit facilities whereby the accused hoped the financial problems of AAS would be alleviated. However, each forged document purported to be a 'valuable security'. The incidents that were employed to the forgery of each document, namely, the affixing of the seal of AHL or AAS, as the case may be, the affixing of the purported signatures of Tham Chong Fai, Lam Lian Seet and Eu Eng Kong, and the affixing of a separate number to each share

certificate and its corresponding 'blank transfer', *etc.* all went to complete each forged document. The forgery of each document, although completed within seconds of the next to be forged, was a separate act from the others and never depended on the completion of the others before being complete in itself. The only connection between the forgeries was the proximity in time and a continuity of purpose that, at most, would qualify them as offences committed within the 'same transaction'. In any event, each share certificate and its corresponding 'blank transfer' was to be used by Eng with as many banks or financial institutions as he thought fit to use, a fact that was also known to the accused."

The provisions of section 71(1) of the Penal Code refer to "... anything which is an offence is made up of parts, any of which parts is itself an offence ..." Offences coming under the operation of section 71(1) concerned "composite offences" *i.e.* offences which in themselves encompassed specific offences which are ingredients of the "composite offences". Section 71 applies only where the offender is not only charged for the principal offence but also with the component parts of it which are offences in themselves.

In the present case, section 71(1) would apply if the appellant, who was charged with forging the share certificates, was also charged with forging the company seal, and forging the signatures of his brother Tham Chong Fai as director of the company. Similarly as regards the charge for forging the "blank transfers" the appellant was also charged with forging the seal of AAS Nominees and forging the signatures of Lam Lian Seet, a director of AAS nominees, who had resigned. It will operate if the appellant is charged with every criminal act that had led to the commission of one forged valuable security. The appellant in this case forged 18 separate share certificates, individually numbered, as well as 18 corresponding "blank transfers" on two occasions. The forging of each share certificate and each transfer form stands separately by themselves as separate and completed offences with the same punishments. The precise number of forgeries committed do not represent the component parts of any one offence. Each of the forgeries stands by itself.

The trial judge was right in holding that there were 36 distinct offences and that section 71(1) of the Penal Code did not apply.

Sentence

The appellant is also dissatisfied with the sentences on the ground that the sentences are manifestly excessive having regard to all the circumstances of the case. It is contended that in sentencing the appellant, the trial judge failed to take into consideration the following mitigating circumstances:

(i) the appellant returned to Singapore from the USA voluntarily;

(ii) the appellant had not intended to cause "permanent" loss to anyone and took steps to prevent loss;

(iii) the trial judge failed to give due consideration to the conduct and acts of Eng which if so taken would mitigate his (appellant's) criminal acts;

(iv) the forgeries were done with the intention of benefiting AAS and that the appellant did not directly benefit from the forgery of the share certificates but had in fact suffered heavy personal loss;

(v) the appellant had made full restitution and that no financial institution or bank suffered any losses.

It is also contended that the trial judge erred in regarding the offences as serious offences calling for a deterrent sentence.

The mitigating factors raised were also raised in the court below. The trial judge had fully considered them and gave reasons in rejecting them.

I have not been persuaded that the trial judge had misdirected himself on the mitigating factors submitted and dismissed by him. I do not find that he had been influenced by the publicity which was generated in the local press, before the appellant's return to Singapore, regarding the appellant's connection with the failure of Pan Electric which was in no way reflected in the 36 charges against the appellant. I also do not find that the trial judge had misdirected himself in respect of Eng's role. The forgeries were the appellant's idea. Even Eng thought that the share certificates were genuine.

The forged share certificates were deposited with several banks and financial institutions in Singapore and Malaysia. They were accepted at their face value without further enquiries. The fact that the forgeries were undetected for seven years show the inherent trust banks and financial institutions placed on share certificates when

accepting them as security for loans. Trust is essential in the financial world.

These offences involved fraud which concerned not just the appellant and Eng but the whole commercial and financial institutions in Singapore. The appellant audaciously carried out these forgeries. The forging of share certificates must be viewed seriously; they represent title to valuable shares. I agree with the trial judge that a deterrent sentence ought to be imposed for what the appellant did.

Section 467 of the Penal Code provides for a punishment of either life imprisonment, or ten years' imprisonment and in addition a fine. The imposition of consecutive sentences in respect of two of the charges was a proper exercise of discretion. The overall sentence of eight years' imprisonment is not manifestly excessive.

In the result this appeal is dismissed.

Appeal dismissed.

Solicitors: *Toh Tan & Partners.*

BRUNEI REPORTS

YATOR BIN BUNTA v. PUBLIC PROSECUTOR

**[C.A. (Yang P., Silke & Godfrey JJ.)
30 May & 1 June 1988]**

[Bandar Seri Begawan – Criminal Appeal No. 8 of 1987]

Criminal Procedure – Criminal appeal to Privy Council – Notice of motion filed to seek leave of Court of Appeal – Whether Court of Appeal can grant such leave – Brunei (Appeals to the Privy Council) Orders in Council 1951 and 1963 – Judicial Committee Act 1833, s. 3.

The appellant was sentenced to death by the High Court on charges of murder and possession of firearms. His appeal to the Court of Appeal was dismissed. The appellant then filed a notice of motion seeking the leave of the Court of Appeal to appeal to the Judicial Committee of the Privy Council.

Held: (1) the principle that the Judicial Committee is not a court of criminal appeal still pertains. Should their Lordships consider a matter criminal to be one fit for their consideration, then they reserve to themselves the giving of special leave after which the matter is directed to be heard at an appropriate date;

(2) matters criminal emanating from Brunei can still be presented to Her Majesty in Council but it is not open to the court here to accede to the order sought in the notice of motion;

(3) the application is misconceived and the court makes no order upon it.

Case referred to:

(1) *In Re Abraham Mallory Dillet* (1887) 12 App. Cas. 459 (folld).

COURT OF APPEAL.

Francis Chiew for the appellant.

Dk. Zabaidah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Silke J. (delivering the judgment of the court): Yator bin Bunta was, in the High Court in Brunei Darussalam, tried before O'Connor J., sitting as a judicial commissioner, and two assessors. At the conclusion of that trial, on 25 March 1987, the assessors returned verdicts of not guilty. O'Connor J. disagreed with them and as a result directed a new trial.

The retrial took place before Macdougall J., sitting as judicial commissioner, and two assessors. The charges were the same: murder contrary to section 300 of the Penal Code and possession of a